Held: the proper procedure for quashing an order of the Rent Assessment Board is not by way of an originating motion.

ORIGINATING SUMMONS.

B. C. Guha for the applicant.

K. Chelvanayagam for the respondent.

Wilson J. : — In Sessions Court case No. 507 of 1955, Loh Seow v. Me Pe Peang (f), the learned President ordered *inter alia* that the defendant do quit and deliver up vacant possession of No. 449A, Batu Road, Kuala Lumpur, to the plaintiff on or before the 31st October, 1955. It is only with this part of the order that I am now concerned.

By Application No. 83 of 1953 the plaintiff applied to the Rent Assessment Board for leave to apply to a Court for an order of ejectment but the said application was refused. The plaintiff subsequently made another application to the Board who, by an order dated the 14th April, 1955, gave permission to the plaintiff to apply to a Court for an Order of ejectment. It was argued before the learned President that the order of the 14th April, 1955, was void and of no legal effect. The learned President, however, found that he was bound to give effect to the order of the 14th April which, in his view, was valid and made the order for ejectment.

On the 13th September, 1955, the defendant appealed to the High Court against the order of ejectment. The appeal came on for hearing before the High Court on the 3rd October, 1955, when it was ordered that the appeal be dismissed with costs.

The defendant (now applicant) on the 13th October, 1955, filed an originating motion in the High Court for an order that the order passed by the Rent Board permitting the plaintiff to file a suit to eject the defendant be quashed. It is to be noted that in paragraph 13 of her affidavit on the motion the applicant states as follows :—

"That on the 14th April, 1955, when the order was passed by the Rent Assessment Board I had no right of appeal and I was advised by my Solicitor to have the order of the Rent Assessment Board quashed by way of a writ of certiorari."

In spite of this, the applicant made no attempt to have the order of the Rent Board quashed by writ of certiorari. Instead she allowed the suit to proceed to trial before the Sessions Court and took the case from the Sessions Court to the High Court on appeal. It was only after the appeal had been dismissed that an attempt was made to quash the order of the Rent Assessment Board by way of an originating motion. Whether an application could have been made for a writ of certiorari after the trial of the case in the Sessions Court and the appeal to the High Court were concluded, it is not necessary for me to decide, because whether or not the applicant could have applied for a writ of certiorari in these circumstances I am satisfied that the proper procedure for quashing an order of the Rent Board is not by way of an originating motion.

The originating motion is dismissed with costs.

Motion dismissed.

LUM SEE ON v. CHAN KIT YONG (f)

[A. C. J. (Whyatt C. J.) November 22, 1955]

[Singapore — District Court Appeal No. 11 of 1955]

Landlord & Tenant — Control of Rent Ordinance, 1953 — Whether personal representative who retains possession of premises after death of tenant becomes statutory tenant — Revocation of letters of administration after issue of summons for possession but before trial — What is material date for determining rights of parties.

The plaintiff in this case originally let the premises to a woman named Lee Ah Lien. On September 15, 1953 Lee Ah Lien died without making a will. On October 27, 1953 the plaintiff's solicitors sent a notice to quit expiring on November 30, 1953 to the Registrar of the Supreme Court addressed to the executors or administrators of Lee Ah Lien, the occupiers of the premises and all others whom it may concern. A copy of the notice was served on the occupiers of the premises. In the meantime the defendant, who claimed that the deceased was her adopted grandmother and that she was living with her at the time of her death applied for and obtained on November 28, 1953 letters of administration to the deceased's estate. She did not give up possession on November 30, 1953 as required by the notice to quit and consequently the plaintiff commenced proceedings on January 13, 1954. In her defence filed on April 5, 1954 the defendant admitted the service of the notice to quit but stated that letters of administration had been granted to her before the tenancy expired and claimed the protection of the Control of Rent Ordinance. On April 15, 1954 the date fixed for the hearing of the case, counsel for the plaintiff asked for an adjournment to enable him to challenge the grant of letters of administration to the defendant. The learned District Judge granted an adjournment and on June 12, 1954, the grant to the defendant was revoked. The case was eventually heard by the learned District Judge on December 3, 1954 and he gave judgment for the defendant. The plaintiff appealed.

Held: (1) where the tenant of premises has died intestate, the tenancy can be determined by serving a notice to quit on the occupiers of the premises; (2) where a person who is residing with a tenant at the time of the tenant's death, subsequently obtains letters of administration before the tenancy is determined by notice to quit, the person becomes a statutory tenant and can claim the protection of the Control of Rent Ordinance; (3) the relevant date for determining the rights of the parties is the date of the hearing and as in this case, the defendant had ceased to be the legal personal representative of the deceased when the action was heard, she was not entitled to rely upon the provisions of the Control of Rent Ordinance at that date to defeat the plaintiff's claim for possession at common law.

Cases referred to :—

(1) *Harrowby (Earl) v. Snelson* (1951) 1 All E.R. 140.

(2) *Sweeny v. Sweeny* (1876) I.R. 10 C.L. 375.

(3) *Benninga (Mitcham) Ltd. v. Bijatra* (1946) 1 K.B. 58.

DISTRICT COURT APPEAL.

R. S. Boswell for the appellant.

Lee Kuan Yew for the respondent.

Whyatt C.J. : — This is an appeal from the judgment of the learned District Judge dismissing the plaintiff's claim for recovery of possession of certain premises described as "the ground floor, No. 6 Jiak Chuan Road, Singapore". The plaintiff originally let these premises many years ago to a woman named Lee Ah Lien at a monthly rental of $39.40 payable on the first day of each month. Lee Ah Lien occupied one of the rooms and sub-let the remainder to three sub-tenants. On the 15th September 1953 Lee Ah Lien died without making a will. On the 27th October 1953 the plaintiff's solicitors wrote to the Registrar of the Supreme Court, stating that, according to the law of England, the tenancy of a person dying intestate vests in the President of the Probate Divorce and Admiralty Division, and they presumed that in the Colony, it vested in the Judges of the Supreme Court; accordingly they enclosed a Notice to Quit expiring on the 30th November 1953 addressed to Executors or Administrators of Lee Ah Lien, the occupiers of these premises and all others whom it may concern. A copy of the Notice was forwarded by the Registrar to the occupiers on the 29th October 1953. In the meantime the defendant who according to the evidence, claimed that the deceased was her adopted grandmother and that she was living with her at the time of her death applied for and obtained on the 28th November 1953, Letters of Administration to the deceased's estate. She did not give up possession on the 30th November as required by the Notice to Quit and consequently the plaintiff commenced these proceedings for possession on the 13th January 1954. In her Defence filed on the 5th April 1954, the Defendant admitted the service of the Notice to Quit but stated that Letters of Administration had been granted to her before the tenancy expired and claimed the protection of the Control of Rent Ordinance 1953.

It might have been expected on these facts and admissions that the only matter seriously in dispute between the plaintiff and the defendant in these proceedings was whether the defendant was a statutory tenant but the grounds of decision of the learned District Judge make no mention of the Control of Rent Ordinance 1953. This is not altogether surprising if the case was presented to the learned District Judge in the same way as it was presented in this Court. During the course of the hearing of this appeal, counsel on both sides ranged over a wide field, raised numerous points of law and modified their submissions with unusual dexterity and celerity. But in the end, the only issue of substance to emerge from the arguments, in my view, is whether the defendant can rely on the Control of Rent Ordinance 1953 to defeat the plaintiff's claim for possession of these premises.

Counsel for the plaintiff at first relied strongly on the proposition that the tenancy of these premises vested in the Judges of the Supreme Court on the intestacy of Lee Ah Lien and therefore, the proper way and indeed the only way in which the tenancy could be terminated was to serve a notice to quit on the Judges of the Supreme Court. Later, however, after considering the decision in *Harrowby (Earl) v. Snelson*[1], counsel for the plaintiff argued that it was sufficient if a notice to quit was served on the persons in occupation of the premises. The *Earl of Harrowby* case decided that although a tenancy had on an intestacy vested in the President of the Probate Divorce and Admiralty Division by virtue of the provisions of section 9 of the Administration of Estates Act 1925, the landlord could nevertheless determine the tenancy by serving a notice to quit on the occupiers of the premises. In that case Mr. Justice Cassels quoted with approval Dowse B. in *Sweeny v. Sweeny*[2] where he said :—

> "Why should he (the landlord) be placed in a worse position by the death of the tenant than he would have been if the tenant had lived? . . . . . When the tenant is dead the landlord should be entitled to treat the person he finds in possession as the representative of the estate and deal with him and it accordingly."

Counsel for the plaintiff contended that this principle applied to the present case and therefore the contractual tenancy existing at the time of Lee Ah Lien's death was determined by the notice to quit expiring on the 30th November 1953. Counsel for the defendant sought to distinguish the *Earl of Harrowby* case on the narrow ground that only a copy and not the original Notice to Quit was served on the occupiers of No. 6 Jiak Chuan Road. But as counsel for the plaintiff pointed out, it was not necessary that the notice to quit should be in writing; it would have been sufficient if it had been a parol notice. In any case he maintained, the defendant has precluded herself from relying upon this argument by paragraph 4 of her Defence which reads as follows :—

> "The Defendant admits the service of the Notice to Quit on the 27th October 1953 but states that Letters of Administration were granted on the 28th day of November 1953, prior to the date of expiration of tenancy on the 30th day of November 1953."

If the defendant had intended to object to the notice to quit on the ground that she was served only with a copy, the objection should have been taken in the pleading. As it stands, paragraph 4 of the Defence is a clear admission that, subject to any rights acquired by the grant of Letters of Administration, the defendant accepts the Notice to Quit as valid and determining the tenancy on the 30th November 1953. The defendant is bound by that admission which, in my view, is sufficient not only to dispose of the defendant's objections to the notice but also renders unnecessary the elaborate arguments concerning the vesting of the tenancy in the Judges of the Supreme Court.

The question remains, however, whether the defendant is entitled to retain possession as a statutory tenant. But before dealing with this question, I should perhaps mention an argument advanced on behalf of the defendant on the assumption that the notice to quit was valid and that no statutory tenancy had vested in the defendant. It was contended that the plaintiff's action must nevertheless fail because he had sued the wrong party. The proper defendants, it was contended, were the two sisters of the deceased who were granted Letters of Administration on the 3rd July 1954 after the defendant's Letters of Administration had been revoked on the 12th June 1954. The answer to this contention is that if there was a valid notice to quit, the contractual tenancy expired on the 30th November, 1953, and consequently there was no contractual tenancy in existence which could vest in the co-administratrices when they obtained a grant of Letters of Administration on the 3rd July 1954. Once a tenancy has been extinguished, it cannot be revived by a grant of letters of administration, and therefore it follows that there was never at any time privity of estate or privity of contract between these co-administratrices and the plaintiff; nor were they ever in possession of these premises. Consequently the co-administratrices could not properly be sued in a action by the plaintiff for recovery of possession of these premises. The only person who could properly be sued, after the determination of the contractual tenancy (leaving aside for the moment the question of statutory tenancy), was the person in actual possession of the premises, and that was the present defendant.

I now turn to consider whether the defendant can claim the protection of the Control of Rent Ordinance 1953. Counsel for both parties agreed that if a person, who is residing with a tenant at the time of the tenant's death, subsequently obtains Letters of Administration before the tenancy is determined by Notice to Quit that person becomes a statutory tenant. In the present case, defendant obtained Letters of Administration on the 28th November 1953, two days before the contractual tenancy expired on the 30th November 1953, and therefore, so counsel for the defendant contended, she became a statutory tenant on the 1st December 1953. Counsel for plaintiff argued that the Letters of Administration ought never to have been granted to the defendant because she was not, as she claimed, the adopted grand-daughter of the deceased and he went so far as to suggest that the defendant had obtained the grant by fraud.

The Court must, however, confine itself to matters on the record and as there is no allegation on the record that the grant was fraudulently obtained, I proceed on the basis that the defendant did obtain a valid grant of Letters of Administration on the 28th November 1953, and that she was living with Lee Ah Lien at the time of her death. It follows she became a statutory tenant on the expiration of the contractual tenancy on the 30th November 1953.

The plaintiff issued his summons in these proceedings on the 13th January 1954 and the defendant delivered her defence on the 5th April 1954 claiming the protection of the Control of Rent Ordinance 19[illegible]. At that date she was still the personal representative of the deceased tenant and therefore the statutory tenancy which came into existence on the 1st December 1953 was still subsisting in her. On the 15th April, the date fixed for the hearing of the case, counsel for the plaintiff asked for an adjournment to enable him to challenge the grant of Letters of Administration to the defendant which apparently had only come to the knowledge of the plaintiff when the Defence was filed. The District Judge granted an adjournment and on the 12th June 1954 the grant to the defendant was revoked. Counsel for plaintiff contended that the defendant ceased to be a statutory tenant when the grant was revoked on the 12th June 1954 and therefore she was not entitled to the protection of the Control of Rent Ordinance when the case was heard by the learned District Judge on the 3rd December 1954. Counsel for the defendant did not dispute that the defendant ceased to be a statutory tenant on the 12th June 1954 but argued that the relevant date for determining the rights of the parties was the date of the issue of the summons, namely the 13th January 1954, and not the date of the hearing, and as the defendant was a statutory tenant on that date the plaintiff's claim in this suit should be dismissed He conceded that the plaintiff might, if so advised, issue a fresh summons subsequent to the date of the revocation of the defendant's grant, and pursue his claim against the defendant in fresh proceedings.

Thus the ultimate question in this case resolves itself into the narrow issue of whether the relevant date for determining the rights of the defendant is the 13th January 1954 when proceedings were commenced or the 3rd December 1954 when the case was heard. No authorities were cited by Counsel on either side to assist the Court in the determination of this issue but fortunately valuable judicial guidance is to be obtained from Mackinnon L.J.'s observations in *Benninga (Mitcham) Ltd. v. Bijstra*[3] at page 62 :—

"Normally, no doubt, a plaintiff's cause of action must exist at the date of his writ or plaint. The plaintiff's cause of action is a claim to the possession of their free-hold against a tenant who has received due notice to quit. That cause of action existed on March 20th. The Rent Restriction Acts do not forbid the trying of an action; they only prohibit the granting of relief to which the common law would entitle the plaintiff, unless certain conditions have been fulfilled. The question whether those conditions exist must be determined when the question whether the relief claimed may be granted has to be decided, namely, at the hearing of the action."

It follows, therefore, that the relevant date for determining the rights of the parties is the date of the hearing. When this action was heard on the 3rd December 1954, the defendant had ceased to be the legal personal representative of Lee Ah Lien. Consequently she was not entitled to rely upon the provisions of the Control of Rent Ordinance at that date to defeat the plaintiff's claim to possession at common law. In the result this appeal succeeds.

Appeal allowed.

Solicitors : *R. C. H. Lim & Co.; Lee & Lee.*

X & CO. v. COMPTROLLER OF INCOME TAX

[A. C. J. (Murray-Aynsley C.J.) April 23, 1955]

[Singapore — District Court Appeal No. 20 of 1954]

Income Tax Ordinance, 1947, s. 13(1)(g) — Trust established for charitable purposes — Meaning of — Whether a general trust a portion of whose income is devoted to charitable purposes comes within the scope of the exemption.

By an Indenture, a settlor, now deceased, conveyed and assigned properties in Singapore to trustees to be held on trust for certain purposes, all of which were admittedly non-charitable with the exception of two which provided for the distribution of a sum of $3,200 per annum (either in cash or in the purchase of rice or corn) for the poor in a certain part of Arabia. It was admitted that these two purposes were "charitable" within the meaning of s. 13(1)(g) of the Singapore Income Tax Ordinance.

The Comptroller did not accept the trustees' claim that the income amounting to $3,200 applied for the purpose described above was exempt under s. 13(1)(g) as the income of "a trust established for charitable purposes only" and accordingly the $3,200 was included in the assessment on the trustees.

Held: (1) s. 13(1)(g) of the Income Tax Ordinance, 1947, which exempted from taxation the income of a charitable institution or of any body of persons or trust establishment for charitable purposes only applies to trusts or persons natural or juristic who have an income which is devoted to charitable purposes and who can be assessed; (2) the appellants who are trustees for the purposes of the trust generally and who have an income part of which is devoted to charitable purposes do not come within the scope of the provision.

INCOME TAX APPEAL.

On behalf of the trustees it was contended that the word "trust" in s. 13(1)(g) was capable of more than one meaning: in such circumstances the ordinary canons of construction required, firstly, that the intention of the legislature should be ascertained and effect given to that intention provided that no violence was done to the wording of the Ordinance; secondly, that of two possible constructions the one which led to a just and reasonable result was to be preferred; thirdly, that a taxing statute must be construed strictly against the Revenue and liberally in favour of the subject. It was further contended that the part of the disposition which set aside $3,200 per annum for charitable purposes was a separate trust. The word "trust" was sometimes used to describe the whole of a document which might contain many different dispositions, while in other cases the word was applied to describe particular dispositions within the "trust" so that a single document might create more than one "trust": trusts were separate when they were capable of separate enforcement and the particular disposition in the settlement before the Board which set aside $3,200 per annum for charitable purposes was a disposition capable of separate enforcement. It was accordingly claimed that the income amounting to $3,200 constituted the income of a trust established for charitable purposes only and was exempt from tax.

On behalf of the Comptroller it was contended that the decision in the U.K. case of **Lawrence & Ors. v. C.I.R.**, 23 T.C. 333 was conclusive against the appeal before the Board. In the **Lawrence case** it had been admitted that the trust in question was not a trust established for charitable purposes within the first branch of s. 37(1)(b) of the U.K. Income Tax Act, 1918, and the case was argued on the grounds that the trust in question fell within the second branch of the heading. The language of s. 13(1)(g) of the Singapore Income Tax Ordinance was practically identical with that of the first branch of s. 37(1)(b) of the U.K. Act but it was significant that the second branch of s. 37(1)(b) was nowhere to be found in the Singapore Ordinance. If the Singapore legislature had intended to exempt from tax the income of all charitable trusts a provision on the lines of the second branch of s. 37(1)(b) would have been inserted in the Singapore Ordinance, in which event the income of $3,200 in the appeal before the Board would have been exempt from tax. It was accordingly submitted that the income amounting to $3,200 applied for charitable purposes did not constitute the income of a trust established for charitable purposes only within the meaning of s. 13(1)(g) of the Income Tax Ordinance and that the appeal should be dismissed.

The Board dismissed the appeal, the majority holding that (a) there was no charitable institution nor was there any body of persons or trust established wholly or even partly for charitable purposes; (b) the fund from which the income was derived was neither wholly nor partly the property of a charitable institution, body of persons or a trust.

The trustees appealed to the High Court.

T. E. Atkinson for the appellants.

A. V. Winslow (Crown Counsel) for the respondent.